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## LABOUR & EMPLOYMENT DEPARTMENT

### NOTIFICATION

The 18th July 2005

No. 5982-II/1 (B)-90/1994/LE.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 4th June 2005 in I.D. Case No. 71/1999 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of M/s. Kalinga Engineers Ltd., Atharbanki, Paradeep and its workman Shri Akshaya Kumar Mohanty was referred for adjudication is hereby published as in the schedule below:—

### SCHEDULE IN THE LABOUR COURT, BHUBANESWAR INDUSTRIAL DISPUTE CASE No. 71 OF 1999

Dated the 4th June 2005

*Present:*

Shri P.K. Sahoo, O.S.J.S. (Junior Branch),  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

*Between:*

The Managing Director,  
M/s. Kalinga Engineers Ltd.,  
At. Atharbanki,  
P.O. Paradeep,  
District. Jagatsinghpur.

. . First party—Management

And

Shri Akshaya Kumar Mohanty,  
S/o. Shri Gopinath Mohanty,  
At. Balipadia,  
P.O. Kumudjeypur,  
Dist. Cuttack.

. . Second party—Workman

*Appearances:*

None

. . For first party—Management

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Shri Akshaya Kumar Mohanty

. . Second party—workman himself

## AWARD

The State Government in exercise of powers conferred by sub-section (5) of section 12 read with clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo No.11216 (5)/LE., dated 19th August 1999 for adjudication and Award.

2. The terms of reference may briefly be stated as follows:

“Whether the action of the Management of M/s. Kalinga Engineers Ltd., Atharbanki, Paradeep in terminating the services of Shri Akshaya Kumar Mohanty, Turner with effect from 01-10-1997 is legal and/or justified? If not, to what relief Shri Mohanty is entitled?”

3. Briefly stated the case of the workman Shri Akshaya Kumar Mohanty is that he was engaged under the Management of M/s. Kalinga Engineers Ltd., Atharbanki, Paradeep (in short the Management) with effect from 01-08-1981 as Grade I Turner. He continued to work as such till 21-09-1997. Due to his illness he remained on leave from 22-09-1997 to 04-10-1997. As 05-10-1997 was Sunday, he reported for duty on 06-10-1997 but he came to know that his services were terminated with effect from 01-10-1997. According to the workman he had rendered continuous uninterrupted service for years together with much sincerity, devotion and to the utmost satisfaction but the Management without any rhyme or reason illegally terminated him from service with effect from 01-10-1997 without following the mandate of section 25-F of the Industrial Disputes Act, 1947 (in short the Act). Accordingly he seeks industrial adjudication. While challenging the action of the Management in terminating his service with effect from 01-10-1997 he has now prayed for his reinstatement in service with full back wages along with service benefits. Hence the reference.

4. Despite notice the Management did not enter its appearance as a result it was set *ex parte*. The *ex parte* hearing commenced on 02-07-2004.

5. During *ex parte* hearing the workman in support of his case has examined himself as W.W.1 and has relied upon the copy of his appointment letter and xerox copies of the letter of termination, attendance card, E.S.I. card, out-door ticket Dt. 23-09-1997, pay slips, medical certificate and the postal receipt of under certificate of posting marked as Exts.1 to 8 respectively.

6. During *ex parte* evidence the workman has clearly and categorically supported and corroborated the averments already averred in his statement of claim. In his evidence he has stated that he joined in the establishment of the Management with effect from 01-08-1981 and continued to work till 21-09-1997. Due to his illness he remained on leave from 22-09-1997 to 04-10-1997. Since 05-10-1997 was the Sunday, he reported for duty on 06-10-1997 but he was refused employment. The Management without any rhyme or reason had illegally terminated him from service with effect from 01-10-1997 without giving any notice or notice pay and retrenchment compensation. In course of his evidence he has duly proved the appointment letter, letter of termination, attendance card, E.S.I. card, out-door ticket, pay slip, medical certificate and the postal receipt marked as Exts.1 to 8 respectively. The evidence of the workman has not been challenged by the Management anywhere in the evidence. In absence of any rebuttal evidence to that effect absolutely I find no reason to disbelieve his evidence rather it is clearly evidence from the evidence of the workman that he had rendered continuous service for years together with effect from 01-08-1981 till the date of his termination on 01-10-1997 but the Management without any rhyme or reason had illegally terminated him from service without giving any notice or notice pay and retrenchment compensation which, in my view, are in complete violation of the mandatory provisions of section 25-F of the Act. The settled position of law is that the provisions of the section 25-F of the Act is mandatory and any violation thereof will render retrenchment void *ab initio*. On careful analysis and scrutiny of the evidence of the workman on record and the documents relied upon by him, I am of the view that the action of the Management in terminating the services of the workman with effect from 01-10-1997 was illegal, unjustified and against the

mandate of section 25-F of the Act. In that view of the matter the workman is entitled to the relief of reinstatement.

7. The schedule of reference clearly shows that the services of the workman have been terminated with effect from 01-10-1997 and absolutely there is no material on record to prove and establish that he has been gainfully employed elsewhere with effect from the date of his termination. In the above premises, the workman is entitled to be reinstated in service, but on the facts and circumstances of the case, as the workman had not worked with effect from the date of his termination he is entitled to get compensation towards back wages a lump sum amount of Rs. 4,000 which, in my considered opinion, would serves the ends of justice in the instant case.

8. Hence it is ordered.

### ORDER

That the action of the Management of M/s. Kalinga Engineers Ltd., Atharbanki, Paradeep, in terminating the services of Shri Akshaya Kumar Mohanty, Turner with effect from 01-10-1997 is neither legal nor justified. The workman Shri Mohanty is entitled to be reinstated in service with a lump sum compensation towards back wages to the tune of Rs.4,000 (Rupees four thousand) only.

The reference is thus answered accordingly *ex parte*.

Dictated and corrected by me

P.K.SAHOO  
04-06-2005  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

P.K.SAHOO  
04-06-2005  
Presiding Officer,  
Labour Court,  
Bhubaneswar.

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By order of the Governor  
D.MISHRA  
Under-Secretary to Government